

SAMPLE

LEASE TO OWNERSHIP AGREEMENT

for

PURCHASE ORDER **B**

THIS LEASE TO OWNERSHIP AGREEMENT (Agreement) is made and entered into by and between **Lessor Name** (Lessor) and The Regents of the University of California (University).

The Regents of the University of California, a California corporation, have entered into Contract W-7405-ENG-48 with the United States Government (Government), represented by the U.S. Department of Energy (DOE), for the performance of research and development work at the Lawrence Livermore National Laboratory (LLNL).

WITNESSETH

The parties, in consideration of the exchange of mutual promises contained herein, agree as follows.

1. LEASE OF EQUIPMENT

The Lessor hereby leases to the University and the University hereby leases from the Lessor the equipment described in the attached DESCRIPTION OF EQUIPMENT, hereinafter referred to collectively as Equipment. The University will evidence its acceptance of the Equipment by executing and delivering to the Lessor an Acceptance Certificate in a form acceptable to the Lessor.

2. TERM

This Agreement shall become effective upon the Lessor's signature acceptance of a fully executed Agreement. The term of this Lease to Ownership Agreement shall begin upon acceptance of the Equipment as specified in the Equipment Purchase Order **BXXXXXX** and shall continue for **X** months after the University's acceptance of the Equipment pursuant to the terms of the Equipment Purchase Order.

3. PAYMENTS

In consideration of the promises and the agreements on the part of the Lessor herein, the University hereby agrees to pay to the Lessor lease payments for the Equipment beginning after acceptance of the Equipment, in installments and at the times hereinafter specified. The Payment Schedule shall be established based on the purchase price of the related Equipment, adjusted for prompt payment discount as necessary, and a simple amortization schedule calculated to repay the adjusted principal amount during the lease term. The lease rate applied to the Payment Schedule shall be the sum of the Treasury Constant Maturity Rate for a term equivalent to the lease term, as listed in the "Federal Reserve Statistical Release H.15," from the acceptance date of the Equipment, and a factor of **X** percent.

The first payment due date for the Equipment accepted and for which the Lessor has tendered payment shall be the first day of the month after the month following the date of acceptance.

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Based upon the adjusted principal amount for the Equipment, the University hereby agrees to make lease payments in accordance with the Payment Schedule, payable in arrears. The Payment Schedule for the Equipment shows the Concluding Payment, which is the outstanding principal balance (simply calculated without the addition of prepayment penalties or fees) for each payment period. The University will make all payments at the address of the Lessor, set forth below, or at such other address as the Lessor may, from time to time, designate in writing. The time of payment will be of the essence in this Agreement.

[Lessor Name]
Attention: [Name]
[Address]
[City, State, Zip]

If any lease payment is not paid within 10 days of the due date, on the 11th day, interest shall accrue on the late payment, until paid, at the interest rate specified for the corresponding Payment Schedule. The Lessor shall invoice the University at least 21 days prior to the due date of the current lease payment for each Payment Schedule.

In the event the University elects to make payments, other than purchase option payments described in Section 4 below, in addition to scheduled lease payments, such payments shall either reduce the amounts of subsequent lease payments, be applied against the principal of future individual lease payments, or reduce the term of the selected Payment Schedule, or any combination of these actions, as mutually agreed between the Lessor and the University.

4. PURCHASE OPTION

The University is hereby given the option (provided the University is not in default in the performance of any of its obligations hereunder) to purchase the Equipment in the Equipment Purchase Order at any time after acceptance of the Equipment by paying the Concluding Payment related to the last completed lease payment of the corresponding Payment Schedule, plus a per diem charge for payments received after the due date reflected on that Schedule, plus any outstanding late charges. The per diem rate will be based on the lease rate stated in the corresponding Payment Schedule and calculated on a 360-day per year basis.

The University will exercise such option to purchase the Equipment by notifying the Lessor of the University's intention to do so, in writing, not less than 30 days before the proposed purchase date. Such notice may be delivered or mailed to the Lessor's office at:

[Lessor Name]
Attention: [Name]
[Address]
[City, State, Zip]

The Lessor shall keep the University advised of any change of the Lessor's address for the purpose of such notice.

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5. DEFAULT

The Lessor shall provide the University with written notice of any defaults or non-performance and offer a cure period of at least 30 days to remedy the default or non-performance before the Lessor's default rights are exercised.

The University will be in default upon the occurrence of any one of the following events: failure to pay the lease payments or any additions thereto within ten days of the due date thereof except for cancellation in accordance with Section 8; failure to observe or perform any other term, condition or covenant of the Agreement and such failure continues for a period of 30 days after notice; if the University ceases the conduct of active business; if a receiver or trustee shall be appointed for the University or any of the University's assets or properties; if any of the Equipment shall be attached, levied upon, encumbered, pledged, seized or taken under any judicial process and such proceedings shall not be vacated, or fully stayed within 20 days thereof; if the University shall make an assignment for the benefit of creditors, institute, or have instituted by, for or against it, any bankruptcy, reorganization, arrangement or insolvency proceedings, or become unable, or admit in writing its inability, to pay its debts as they become due; or if any warranty or representation made or furnished to the Lessor by or on behalf of the University that shall be, or which shall be proven to have been knowingly, false in any material respect when made or furnished.

Upon any event of default, and at any time following the 30 day cure period above in which the defect has not been cured or from time to time thereafter, the Lessor may, at its option and after notice to, or demand upon, the University declare due and payable the aggregate amounts of any lease payments, including any late charges thereon, and any other sums, which are then accrued and unpaid and any amounts specified herein as items of additional rent, which shall be accrued and owing. The Lessor shall have the further right to terminate all or any of the University's rights under the Agreement and thereupon the University shall forthwith surrender and return the Equipment of any such terminated Agreement to the Lessor and to enter upon any premises where the Equipment may be located only with the consent of the University's Security Officer (in conformance with all security regulations and requirements of the DOE, which shall not be unreasonably withheld), and take immediate possession of the Equipment without court order or other process of law, in which event the Lessor shall not be liable for damages resulting from any such entry and repossession except for any willful or gross negligence of the Lessor. All of the Lessor's rights and remedies herein are cumulative and may be exercised concurrently or separately. These rights afforded the Lessor shall be in addition to any rights or remedies available in law or at equity.

In the event the Lessor defaults in the performance of any of the terms and conditions herein, all of the Lessor's rights hereunder, at the option of the University, shall terminate and the Lessor shall become liable for any procurement costs incurred by the University, including, but not limited to, any costs associated with securing a higher interest rate from a new financing source.

6. TAXES

The University will, subject to the conditions listed below, reimburse the Lessor for all license fees, assessments, and sales, use, property and other taxes lawfully imposed during

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the term hereof upon any Equipment by any state, federal or local government, based upon the ownership, leasing, renting, sale, possession or use of the Equipment, together with any penalties or interest in connection therewith not due to the fault or negligence of the Lessor excepting state, federal, or local taxes or payments in lieu thereof imposed upon or measured by the income of the Lessor.

All sums reimbursed to the Lessor under this Section shall be remitted by the Lessor to the appropriate taxing agency and shall fully discharge the University's obligations as provided in this Section. Taxes shall survive until such time as claims by the applicable taxing authority are barred by the applicable Statute of Limitations.

The Lessor agrees to cooperate with the University and do all acts reasonably necessary and appropriate to secure and maintain tax exemption of the property leased hereunder pursuant to Article XIII, Section 3 of the California Constitution.

- A. The University will have the right to conduct all administrative and judicial proceedings with respect to the charges to be reimbursed pursuant to this paragraph or, at its option, the University will have the right to direct such a defense and bear the costs thereof.
- B. No reimbursement shall be made if: the Lessor or its assignee makes any agreement without the University's consent with the applicable taxing authority in the course of settlement, compromise or negotiation, which was known or which reasonably should have been known, by the Lessor or its assignee, to impair or foreclose the effective exercise by the University of its rights under subparagraph A, above; or if the Lessor or its assignee fails to cooperate fully with the University at the University's expense in any proceeding undertaken or directed in accordance with subparagraph A, above, including but not limited to, personnel availability for interviews, affidavits, testimony and/or consultation, and document availability for inspection and/or copying relating to this Agreement, including those accounting records describing the treatment of funds provided by the University pursuant to this Agreement.
- C. The Lessor and its assignee shall use best efforts to refer all inquiries regarding the use and location of the Equipment subject to this Agreement to the University.
- D. The Lessor and its assignee shall use best efforts to give prompt written notice to the University of any inquiry or notice regarding the charges to be reimbursed pursuant to this paragraph from the applicable taxing authority whether written or oral.
- E. No reimbursement shall be made for penalties if such penalties are assessed against the Lessor for any reason other than the failure to file returns on the advice of the University, with the applicable taxing authority and pay the charges determined to be assessed in accordance with law. None of the preceding conditions shall be deemed waived by the University unless such a waiver expressly references this paragraph, is in writing, and is signed either by The Regents of the University of California or any attorney-in-fact of The Regents.

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7. TITLE

Upon acceptance and payment for said Equipment by the Lessor, the Lessor covenants that it is the sole owner of said Equipment, and that no other person, party, firm or corporation has any right, title, interest in or to same and that, during the term of this Agreement, said Lessor will not sell or encumber said property, or any interest therein, except subject to the rights given the University by virtue of this Agreement; and except that the Lessor may sell, assign and transfer its interest in this Agreement and the property covered hereby to its successors and assigns pursuant to Section 10.

8. NONAVAILABILITY OF FUNDS

The Lessor understands that funding of this Agreement is subject to the future availability of annually appropriated, apportioned, and allotted funds; and that this Agreement must be made and administered consistent with 31 United States Code (U.S.C.) §1341 and 41 U.S.C. §11. Accordingly, funding of lease costs under this Agreement shall be provided on a fiscal year basis, subject to a determination by the Department of Energy that sufficient appropriated and apportioned funds are available to be allotted for such costs. The University agrees to give written notice not later than 30 days before the beginning of each successive fiscal year. This notice shall indicate that funds for the next fiscal year, which may be lawfully applied to this Agreement, are available. Such funds shall be applied to continue the Agreement subject to the availability of funds. In the event that no funds are appropriated and/or apportioned, or a determination is not made by the Department that sufficient funds are available to continue this Agreement and no written notice of availability of funds is made within the time prescribed, then this Agreement shall end on the last day of the current fiscal year without penalty or expense of any kind to the University. If funding previously available for this Agreement is withdrawn during the current fiscal year as a result of budgetary action by the Office of Management and Budget or by Congress, the University will notify the Lessor of this occurrence and may cancel this Agreement upon two weeks written notice to the Lessor. Upon cancellation of this Agreement, and upon written direction from the Lessor, the University will deliver the leased equipment to the Lessor within the Continental United States consistent with the terms and conditions described in this Agreement.

9. PAYMENT OBLIGATION

Subject only to Section 8 of this Agreement, the University's obligation to make all payments which shall or may become due hereunder, including but not limited to lease payments or other sums due as additional rent, will not be affected by any defect in condition, operation, fitness for use, damage or destruction of or to the Equipment or any interruption or cessation of use or possession thereof for any reason whatsoever, or any insolvency, bankruptcy, reorganization or similar proceedings instituted by or against the University.

10. ASSIGNMENT

This Agreement or any right, remedy or obligation hereunder is assignable in whole or in part by the University to the Government or successor in interest. This Agreement, and any

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interest in it, is not assignable by the Lessor, in whole or in part, without prior written approval of the University.

11. POSSESSION OF EQUIPMENT

The University will not relinquish its possession of the Equipment nor will the University assign (except to a successor in interest as the Government's operating contractor for the LLNL) or sublet the Agreement, any unit of the Equipment, or any interest in either, unless any such assignee is of equivalent credit rating as the University or the remaining payments are revised accordingly to account for such change in credit rating, by amendment hereto, the assignee assumes all of the obligations under this Agreement, and the Lessor shall have given its prior written consent, which consent shall not be unreasonably withheld.

12. PASSAGE OF TITLE TO THE GOVERNMENT

In the event that the University shall comply with all the provisions of this Agreement (including Section 3) on its part to be kept and performed, then and in that event, upon completion of the payment obligations for the Agreement, all the right, title and interest of said Lessor in and to said Equipment shall vest in and become the property of the U.S. Government, and said Lessor covenants that it will thereupon execute and tender to the University for further consideration of one dollar, a bill of sale of all its right, title and interest in and to said property as evidence of said transfer of title, anything in this Agreement to the contrary notwithstanding.

13. RISK OF LOSS: DAMAGE TO PERSONS AND PROPERTY

The University assumes all risk of loss of or damage to the Equipment from any cause whatsoever until the Equipment is returned to the Lessor, and no such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof shall relieve the University of the obligation to make lease payments or to perform any other obligation under this Agreement. The University is self-insured for fire and extended coverage, vandalism and malicious mischief, and the University is indemnified for and held harmless by the U.S. Government under Clause 16 of Contract W-7405-ENG-48 with respect to claims for loss or damage to the Equipment leased herein. The University will maintain additional property damage insurance with respect to the Equipment in such amounts and covering such risks which are not covered by self-insurance of the University or indemnified by the Government. The proceeds of any such policies will be payable to the University or its assignee. In no event will the insurance limits be less than the amount of the then applicable Concluding Payment with respect to each active Agreement. The University will notify the Lessor within 60 days of loss or destruction of a determination to replace or repair, or to remit the Concluding Payment, plus any prorated portion of the monthly lease payment due, to the Lessor.

This provision in no way relieves the University to make payments in accordance with Section 9. The University agrees that the Lessor shall not be liable to the University for: any liability, claim, loss, damage, injury, or expense of any kind or nature caused, or alleged to be caused, directly or indirectly, by the negligence of the University, its agents, servants and invitees; the inadequacy of any unit of the Equipment for any purpose; any deficiency or

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defect in any unit of the Equipment; the use or performance of any unit of the Equipment; delays in delivery, failure to deliver, interruption or loss of service in the use or performance of any unit of the Equipment; the seizure of the Equipment by any governmental authority or person; any hostile or warlike action by any governmental authority or person; any insurrection, rebellion, revolution, civil war, usurped power or action taken by any authority against the same; any radiation or radioactive contamination; or any loss of business, profits or other indirect, special or consequential damages, of any nature, whether or not resulting from any of the foregoing.

The University covenants and agrees to carry and maintain public liability insurance in the amount of \$300,000 against public liability with respect to or arising out of the use of the Equipment and, upon request, to furnish the Lessor a certificate of such insurance. The University is self-insured for amounts exceeding \$300,000. The University is indemnified for and held harmless by the U. S. Government under Contract W-7405-ENG-48 with respect to claims of public liability exceeding \$300,000.

14. EQUIPMENT TO REMAIN PERSONAL PROPERTY

The University will not permanently attach the Equipment to any personal or real property and asserts that it will keep the Equipment as personal property and not permit it to become a fixture.

15. INSTALLATION AND USE OF EQUIPMENT

All Equipment shall, at the University's expense and except as provided in purchase orders for the Equipment, be installed, operated and disconnected in accordance with any applicable installation and operation manuals or instructions of the manufacturer of the Equipment, by competent and duly qualified personnel in the University's direct employment or under the University's direct supervision with the assistance, as applicable, of the field service and systems engineering representatives of the manufacturer. The University agrees to have any installation site prepared in accordance with the manufacturer's installation instructions.

The University will retain the Equipment at LLNL unless the Lessor consents, in writing, to its removal. In the event that the University relocates the Equipment from LLNL, the University agrees that all details of the move will be arranged and supervised in accordance with manufacturer standards for movement of the Equipment. The University agrees that said Equipment will be used by the University for the ordinary and sole purpose for which it is designed. It is further stipulated and agreed that, during the term of this Agreement, the University will be responsible for and will pay all charges for upkeep and/or storage of said Equipment and will make, at its own expense, any and all repairs, and supply and pay for any and all materials needed to maintain said Equipment in proper condition.

All repairs, alterations and replacements, which shall include all engineering changes prescribed by the manufacturer but excluding any operating software, shall become the Lessor's property and shall be subject to this Agreement when incorporated into or attached to any unit of the Equipment. The University will have the option, upon any return of the Equipment to the Lessor, either to remove any and all attachments and additions, subject to the condition that each unit is restored to its original condition, less normal wear and tear; or

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to allow such additions and attachments to become the property of the Lessor unless the Lessor shall request that the attachments and additions be removed; in which case the unit as to which such request is made will be restored to its original condition, less normal wear and tear, prior to redelivery to the Lessor.

All costs incurred in connection with the operation of each unit, including but not limited to labor, materials, energy, and supplies will be borne by the University. All materials, supplies and accessories used to operate the Equipment will meet the manufacturer's standard specifications.

The University will, at the University's sole expense, install, use, operate and maintain the Equipment in full compliance with all applicable laws, ordinances, rules and regulations or of any regulatory or other governmental bodies having jurisdiction; and will without limiting the foregoing, duly apply for, obtain and maintain in full force and effect all permits and licenses necessary for such installation, use, operation and maintenance, and will further prepare and timely file, or deliver to the Lessor in time for such filing, if the same may only be filed by the owner of the Equipment involved, any and all applications, certifications and reports required to be filed.

16. MANUFACTURER'S WARRANTY

The Lessor hereby assigns to the University for and during the Term of any Agreement, any and all of the manufacturer's warranties expressed or implied, issued on or applicable to each unit of the Equipment hereunder and hereby authorizes the University to obtain all warranties and services furnished in connection therewith by the manufacturer. During this Agreement, the Lessor shall execute such documents of assignment as the University may reasonably request and shall otherwise use its best efforts to make available to the University all of its rights under any of the manufacturer's warranties on the Equipment.

17. NOTICES

All notices shall be in writing and sent by prepaid, registered or certified mail addressed to the party to whom notice is intended to be given at such address as is specified herein or such other address as shall have been subsequently given in writing by such party for the purpose of notice. Any notice complying with the above provisions shall be deemed to have been received by such party on the fifth day after deposit in the mail.

A. Lessor: At such address as is specified under Section 4 of this Agreement.

B. University: University of California
Lawrence Livermore National Laboratory
Attn: SA Name, Mail Stop L-X
P. O. Box 5012
Livermore, CA 94551

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18. WAIVER BY LESSOR

The Lessor's failure at any time to require strict performance by the University of any of the provisions hereof shall not waive or diminish the Lessor's right thereafter to demand strict compliance therewith or with any other provisions. In the event the University fails to comply with any provision of this Agreement, the Lessor shall have the right, but shall not be obligated, to effect such compliance in whole or in part. All payments made by, and expenses of, the Lessor shall be paid forthwith, with any applicable late charges, by the University as items of additional rent hereunder. No waiver by the Lessor of any of its rights hereunder shall be effective unless express and in writing. No effective waiver by the Lessor of any of its rights shall be effective to waive any other rights. No obligation of the Lessor, except as otherwise specified herein, shall survive the Agreement.

19. WAIVER BY UNIVERSITY

The University's failure at any time to require strict performance by the Lessor of any of the provisions hereof shall not waive or diminish the University's right thereafter to demand strict compliance therewith or with any other provisions. In the event the Lessor fails to comply with any provision of this Agreement, the University will have the right, but shall not be obligated, to effect such compliance in whole or in part. No waiver by the University of any of its rights hereunder shall be effective unless express and in writing. No effective waiver by the University of any of its rights shall be effective to waive any other rights. No obligation of the University, except as otherwise specified herein, shall survive the Agreement.

20. MODIFICATION

The Lessor and the University agree that any modifications or changes to this Agreement hereto shall be in writing and shall be signed by both parties.

21. QUIET ENJOYMENT

The Lessor covenants that the University shall have quiet enjoyment of the Equipment during the term of this Agreement so long as the University is not in default thereunder.

22. RELEASE OF INFORMATION

Use of the name of the University of California in publications, news releases, advertising, speeches, technical papers, photographs and other releases of information regarding this undertaking or data developed hereunder may not be made except upon prior written approval from the University.

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23. TERMS AND CONDITIONS

In the event of conflict or inconsistency between the lease-related terms and conditions herein or the University documents referenced in this Agreement, the order of precedence shall be as follows.

Equipment Purchase Order **BXXXXXX** and its other appendices and attachments
The terms and conditions herein
Appendices and attachments referenced herein

24. AGREEMENT BINDING

This Agreement shall, in every respect, be binding on the parties hereto, and their respective successors and assigns.

25. INTEGRATION AND GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the State of California.

26. ENTIRETY OF AGREEMENT

This Agreement and all attachments shall constitute the entire lease agreement concerning the Equipment and shall supersede all other agreements, either oral or written, of the parties with respect to the matters referred to herein, and shall, in every respect, be binding on the parties hereto, and their respective successors and assigns. Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.

27. ATTACHMENTS

Description of Equipment
Payment Schedule(s)

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date(s) shown below.

LESSOR NAME

**THE REGENTS OF
THE UNIVERSITY OF CALIFORNIA**

BY: _____

BY: _____

Signatory Name

TITLE: _____

TITLE: _____

LLNL Procurement & Materiel

DATE: _____

DATE: _____

University Procurement Representative:

[Name], [Title]

Phone Number: (925) 42

Fax Number: (925) 42

E-Mail: @llnl.gov